MOTION FILED
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IN THE

Supreme Court of the United States

October Term, 1977

No. 77-114

WILLIAM J. QUIRK and LEON E. WEIN,
Appellants,

against

MUNICIPAL ASSISTANCE CORPORATION FOR THE CITY OF NEW YORK and THE CITY OF NEW YORK,
Appellees,

and

LOUIS J. LEFKOWITZ,
Attorney General of the State of New York,
Intervenor-Appellee.

On Appeal from the Court of Appeals of the State of New York

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF *AMICUS CURIAE* OF UNITED STATES TRUST COMPANY OF NEW YORK, AS TRUSTEE, IN SUPPORT OF MOTION BY APPELLEES TO DISMISS THE APPEAL FOR WANT OF A SUBSTANTIAL FEDERAL QUESTION OR TO AFFIRM

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September 7, 1977

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United States Trust Company of New York, as Trustee, respectfully moves for leave to file the accompanying *amicus curiae* brief in support of the motion by appellee

Municipal Assistance Corporation For The City of New York ("MAC") to dismiss the appeal for want of a substantial federal question or, in the alternative, to affirm summarily the judgment of the Court of Appeals of the State of New York. The consent of counsel for appellees has been obtained. The consent of counsel for appellants was requested but refused.

The interest of the United States Trust Company in this case arises from the fact that the Trust Company is Trustee under MAC's First and Second General Bond Resolutions under which there have been issued over $4.3 billion of MAC bonds. The holders of such bonds will be directly and substantially affected by the ultimate outcome of this litigation.

United States Trust is confident that appellees will adequately present the case for the Court's consideration of the appeal. The Trust Company believes, however, that its position should be presented to the Court because of its responsibilities as Trustee under MAC's First and Second General Bond Resolutions and because of the Trust Company's belief that appellants have misread and misapplied the Court's decision in *United States Trust Company of New York* v. *New Jersey*, 431 U.S. 1 (1977), which the Trust Company prosecuted as plaintiff and appellant. Further, appellants say that the financial community looks to this case as a "crucial test" after the *United States Trust* case (Jurisdictional Statement 29). To the contrary, the only "financial community" attitude reflected by the Record is that eleven major New York City banks including *amicus* United States Trust—all of which banks hold MAC bonds

and most of which hold City bonds—appeared below as *amici* in support of the MAC legislation challenged here. For these reasons the Trust Company respectfully requests the Court to permit it to file the accompanying brief *amicus curiae*.

Respectfully submitted,

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Appellants misread the Court's holding in *United States Trust Company of New York** v. *New Jersey*, 431 U.S. 1 (1977). See Jurisdictional Statement 20, 21. There the obligations of the Port Authority were revenue bonds secured by specific pledged revenues of the agency and not by any power to tax or any pledge of the credit of a State or municipal subdivision. Here, the City bonds are general obligations of The City of New York, secured by a pledge of the real estate tax (N.Y. Const., Art. VIII, §§2, 10, 12), but by no other specified revenues.

The initial inquiry with respect to an alleged unconstitutional impairment of contract is whether a constitutionally protected contract exists. *United States Trust, supra,* 431 U.S. at 17-18. Here neither sales nor stock transfer tax revenues were ever pledged in support of Appellants' obligations; their purported diversion does not offend any agreement with Appellants. The distinction is dispositive.

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* *Amicus* United States Trust Company of New York is trustee under the First and Second General Bond Resolutions under which there have been issued over $4.3 billion of bonds of Appellee Municipal Assistance Corporation For The City of New York. Appellants say that the financial community looks to this case as a "crucial test" after the *United States Trust* case (Jurisdictional Statement 29). To the contrary, the only "financial community" attitude reflected by the Record is that eleven major New York City banks including *amicus* United States Trust—all of which banks hold MAC bonds and most of which hold City bonds—appeared below as *amici* in support of the MAC legislation challenged here.

The appeal should be dismissed or, alternatively, the judgment should be affirmed without further consideration.

Respectfully submitted,

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